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15 Attorneys for the United States of America

16 UNITED STATES DISTRICT COURT  
17 NORTHERN DISTRICT OF CALIFORNIA  
18 SAN FRANCISCO DIVISION

19 LEON B. HOPPE, JR., ) No. C11-0540 RS  
20 Plaintiff, )  
21 v. )  
22 UNITED STATES OF AMERICA, UNITED )  
23 STATES POST OFFICE, UNITED STATES )  
24 POSTAL SERVICE, and )  
25 DOES 1 to 100, )  
26 Defendants. )  
27 )  
28 )

**STIPULATION FOR COMPROMISE  
SETTLEMENT AND RELEASE;  
~~[PROPOSED]~~ ORDER**

29 It is hereby stipulated by and between the undersigned Plaintiff and the UNITED  
30 STATES OF AMERICA, by and through their respective attorneys, as follows:

31 WHEREAS, Plaintiff filed the above-captioned action on February 4, 2011;

32 WHEREAS, Plaintiff and Defendant wish to avoid any further litigation and controversy  
33 and to settle and compromise fully any and all claims and issues that have been raised, or could  
34 have been raised in this action, which have transpired prior to the execution of this Settlement  
35 Agreement (“Agreement”);

36 STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE ~~[PROPOSED]~~ ORDER  
37 C11-0540 RS

1                   NOW, THEREFORE, in consideration of the mutual promises contained in this  
 2 Agreement, and other good and valuable consideration, the Parties agree as follows:

3                   1. **Agreement to Compromise Claims.** The Parties do hereby agree to settle and  
 4 compromise each and every claim of any kind, whether known or unknown, arising directly or  
 5 indirectly from the acts or omissions that gave rise to the above-captioned action under the terms  
 6 and conditions set forth in this Agreement.

7                   2. **Definition of “United States of America.”** As used in this Agreement, the United  
 8 States of America shall include its current and former agents, servants, employees, and attorneys,  
 9 as well as the United States Postal Service, and/or its current and former agents, servants,  
 10 employees, and attorneys.

11                  3. **Definition of “Parties.”** As used in this Agreement, the Parties are defined to be only  
 12 the United States of America and Leon B. Hoppe, Jr.

13                  4. **Settlement Amount.** The United States of America agrees to pay the sum of three  
 14 hundred ninety seven thousand five hundred dollars and zero cents (\$397,500.00) (“Settlement  
 15 Amount”), which sum shall be in full settlement and satisfaction of any and all claims, demands,  
 16 rights, and causes of action of whatsoever kind and nature, arising from, and by reason of any and  
 17 all known and unknown, foreseen and unforeseen personal injuries, damage to property and the  
 18 consequences thereof, resulting, and to result, from the subject matter of this settlement,  
 19 including any claims for wrongful death, for which Plaintiff or his guardians, heirs, executors,  
 20 administrators, or assigns, and each of them, now have or may hereafter acquire against the  
 21 United States of America.

22                  5. **Release.** Plaintiff and his guardians, heirs, executors, administrators or assigns hereby  
 23 agrees to accept the Settlement Amount in full settlement and satisfaction of any and all claims,  
 24 demands, rights, and causes of action of whatsoever kind and nature, including claims for  
 25 wrongful death, arising from, and by reason of any and all known and unknown, foreseen and  
 26 unforeseen personal injuries, damage to property and the consequences thereof which they may  
 27 have or hereafter acquire against the United States of America on account of the same subject  
 28 matter that gave rise to the above-captioned action, including any future claim or lawsuit of any

1 kind or type whatsoever, whether known or unknown, and whether for compensatory or  
2 exemplary damages. Plaintiff and his guardians, heirs, executors, administrators or assigns  
3 further agrees to reimburse, indemnify and hold harmless the United States of America from and  
4 against any and all such causes of action, claims, liens, rights, or subrogated or contribution  
5 interests incident to or resulting from further litigation or the prosecution of claims by Plaintiff or  
6 his guardians, heirs, executors, administrators or assigns against any third party or against the  
7 United States, including claims for wrongful death.

8 6. **Dismissal of Action.** In consideration of the payment of the Settlement Amount and  
9 the other terms of this Agreement, Plaintiff shall immediately upon execution of this Agreement  
10 also execute a Stipulation of Dismissal, a copy of which is attached hereto as Exhibit A. The  
11 Stipulation of Dismissal shall dismiss, with prejudice, all claims asserted in this action, or that  
12 could have been asserted in this action. The fully executed Stipulation of Dismissal will be held  
13 by Defendant's attorney and will be filed no earlier than fifteen (15) business days after receipt  
14 by Plaintiff's attorney of the check for the Settlement Amount, unless on the fifteenth day after  
15 receipt of the check by Plaintiff's attorney, the check has not yet cleared and Plaintiff's attorney  
16 notifies Defendant's attorney that the check has not yet cleared. Plaintiff's attorney agrees to  
17 deposit the check for the Settlement Amount within five (5) business days of his receipt of the  
18 check.

19 7. **No Admission of Liability.** This stipulation for compromise settlement is not  
20 intended to be, and should not be construed as, an admission of liability or fault on the part of the  
21 United States, and it is specifically denied that it is liable to the Plaintiff. This settlement is  
22 entered into by all parties for the purpose of compromising disputed claims and avoiding the  
23 expenses and risks of further litigation.

24 8. **Parties Bear Their Own Costs.** It is also agreed, by and among the Parties, that the  
25 respective Parties will each bear their own costs, fees, and expenses and that any attorney's fees  
26 owed by the Plaintiff will be paid out of the Settlement Amount and not in addition thereto.

27

28

1       9. **Attorney's Fees.** It is also understood by and among the Parties that pursuant to Title  
 2 28, United States Code, Section 2678, attorney's fees for services rendered in connection with  
 3 this action shall not exceed 25 per centum of the amount of the compromise settlement.

4       10. **Authority.** The persons signing this Agreement warrant and represent that they  
 5 possess full authority to bind the persons or entities on whose behalf they are signing to the terms  
 6 of the settlement.

7       11. **Waiver of California Civil Code § 1542.** The provisions of California Civil Code  
 8 Section 1542 are set forth below:

9       "A general release does not extend to claims which the creditor  
 10 does not know or suspect to exist in his or her favor at the time of  
 11 executing the release, which if known by him or her must have  
 12 materially affected his or her settlement with the debtor."

13 Plaintiff having been apprized of the statutory language of Civil Code Section 1542 by his  
 14 attorney, and fully understanding the same, nevertheless elects to waive the benefits of any and  
 15 all rights he/she may have pursuant to the provision of that statute and any similar provision of  
 16 federal law. Plaintiff understands that, if the facts concerning Plaintiff's injury and the liability  
 17 of the government for damages pertaining thereto are found hereinafter to be other than or  
 18 different from the facts now believed by them to be true, the Agreement shall be and remain  
 19 effective notwithstanding such material difference.

20       12. **Payment by Check.** Payment of the Settlement Amount will be made by check  
 21 drawn on the United States Postal Service for three hundred ninety seven thousand and five  
 22 hundred dollars and zero cents (\$397,500.00) and made payable to, Leon B. Hoppe, Jr. and  
 23 Kneisler, Schondel & Hubbs. The check will be mailed to Plaintiff's attorneys, Kneisler,  
 24 Schondel & Hubbs, at the following address: P.O. Box 5767, Santa Rosa, CA 95402. Plaintiff's  
 25 attorney agrees to distribute the net settlement proceeds to the Plaintiff. Plaintiff and his attorney  
 26 have been informed that payment of the Settlement Amount may take sixty (60) days or more  
 27 from the date that the Court "so orders" this Agreement to process.

28       13. **Tax Liability.** If any income tax liability is imposed upon Plaintiff based on  
 29 payment of the Settlement Amount, Plaintiff shall be solely responsible for paying any such

1 determined liability from any government agency. Nothing in this Agreement constitutes an  
 2 agreement by the United States of America concerning the characterization of the Settlement  
 3 Amount for the purposes of the Internal Revenue Code, Title 26 of the United States Code.

4       14. **Waiver of Workers Compensation Claims Against United States of America.**

5 Endurance Reinsurance Corporation of America, also known as First Comp. Insurance Agency,  
 6 Inc., (hereinafter, "First Comp"), and its administrators, successors, or assigns agree to release  
 7 and waive any and all claims, liens, rights, and causes of action incident to or arising from, and  
 8 by reason of any and all known and unknown, foreseen and unforeseen personal injuries, or  
 9 damage to property and the consequences thereof, which they may have or hereafter acquire  
 10 against the United States of America on account of the same subject matter that gave rise to the  
 11 above-captioned action, including any future claim or lawsuit of any kind or type whatsoever,  
 12 whether known or unknown, and whether for compensatory or exemplary damages. This release  
 13 and waiver includes all claims, rights, liens, and causes of action, which now exist or may  
 14 hereafter accrue, arising from workers' compensation benefits and related expenditures paid to  
 15 date or to be paid in the future, to or on behalf of Leon B. Hoppe, Jr., by Kelsay Trucking and/or  
 16 First Comp, resulting from the subject incident, the accident which occurred on or about July 30,  
 17 2008, and the consequences thereof.

18       15. **Not a Settlement of Plaintiff's Separate Worker's Compensation Case.**

19 Notwithstanding any of the foregoing, Plaintiff is not waiving his right to receive workers'  
 20 compensation benefits. This Agreement is not a settlement of Plaintiff's workers' compensation  
 21 claims. This Agreement is a settlement of Plaintiff's civil case only. Plaintiff and the workers'  
 22 compensation carrier/employer will enter into a completely separate written agreement regarding  
 23 the resolution of Plaintiff's workers' compensation claims as well as the compensation carrier's  
 24 lien and credit rights.

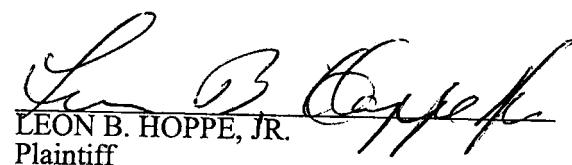
25       16. **Construction.** The United States of America, Leon B. Hoppe, Jr., and First Comp  
 26 each hereby stipulates that it has been represented by and has relied upon independent counsel in  
 27 the negotiations for the preparation of this Agreement, that it has had the contents of the  
 28 Agreement fully explained to it by such counsel, and is fully aware of and understands all of the

1 terms of the Agreement and the legal consequences thereof. For purposes of construction, this  
2 Agreement shall be deemed to have been drafted by all signatories to this Agreement and shall  
3 not, therefore, be construed against any signatory for that reason in any subsequent dispute.

4 17. **Severability.** If any provision of this Agreement shall be invalid, illegal, or  
5 unenforceable, the validity, legality, and enforceability of the remaining provision shall not in  
6 any way be affected or impaired thereby.

7 18. **Integration.** This instrument shall constitute the entire Agreement between the  
8 Parties, and it is expressly understood and agreed that the Agreement has been freely and  
9 voluntarily entered into by the Parties and First Comp with the advice of counsel, who have  
10 explained the legal effect of this Agreement. The Parties further acknowledge that no warranties  
11 or representations have been made on any subject other than as set forth in this Agreement. This  
12 Agreement may not be altered, modified or otherwise changed in any respect except by writing,  
13 duly executed by all of the Parties or their authorized representatives.

14  
15 DATED: 9/28/12

  
LEON B. HOPPE, JR.  
Plaintiff

16  
17 DATED: 10/1/12

  
ROBERT C. HUBBS  
KNEISLER, SCHONDEL AND HUBBS  
Attorneys for Plaintiff, Leon B. Hoppe, Jr.

18  
19 DATE: \_\_\_\_\_

  
SHEA CONWAY  
FIRST COMP INSURANCE

20  
21  
22 MELINDA HAAG  
United States Attorney

23  
24 DATED: 12/11/12

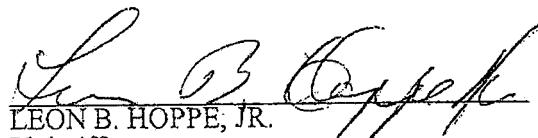
  
JENNIFER S. WANG  
NEILL T. TSENG  
Assistant United States Attorney  
Attorneys for Defendant

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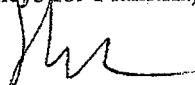
14  
15 DATED: 9/28/12

  
LEON B. HOPPE, JR.  
Plaintiff

17  
18 DATED: 10/1/12

  
ROBERT C. HUBBS  
KNEISLER, SCHONDEL AND HUBBS  
Attorneys for Plaintiff, Leon B. Hoppe, Jr.

20  
21 DATE: 12/18/12

  
SHEA CONWAY  
FIRST COMP INSURANCE

23  
24 MELINDA HAAG  
United States Attorney

25  
26 DATED: \_\_\_\_\_

  
JENNIFER S WANG  
NEILL T. TSENG  
Assistant United States Attorney  
Attorneys for Defendant

1  
2 PURSUANT TO STIPULATION, IT IS SO ORDERED.  
3

4 Dated: 12/12/12

  
5 HON. RICHARD SEEBORG  
6 United States District Judge  
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# Exhibit A

MELINDA HAAG (CSBN 132612)  
United States Attorney  
ALEX G. TSE (CSBN 152348)  
Chief, Civil Division  
JENNIFER S. WANG (CSBN 233155)  
Assistant United States Attorney  
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Attorneys for the United States of America

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

LEON B. HOPPE, JR., ) No. C11-0540 RS  
Plaintiff, )  
v. )  
UNITED STATES OF AMERICA, )  
UNITED STATES POST OFFICE, )  
UNITED STATES POSTAL SERVICE, and )  
DOES 1 to 100, )  
Defendants. )  
STIPULATION OF DISMISSAL WITH  
PREJUDICE

THE PARTIES IN THE ABOVE-CAPTIONED ACTION HEREBY SUBMIT THE FOLLOWING STIPULATION:

Pursuant to Federal Rule of Civil Procedure 41(a), plaintiff Leon B. Hoppe, Jr. and defendant United States of America hereby stipulate to dismiss with prejudice the above-captioned action, including all claims that were asserted therein. Each party will bear its own costs and attorneys' fees.

DATED:

By: LEON B. HOPPE, JR.  
Plaintiff

1 DATED: \_\_\_\_\_

KNEISLER, SCHONDEL AND HUBBS

2 By: \_\_\_\_\_  
3 ROBERT HUBBS  
4 Attorneys for Plaintiff

5 MELINDA HAAG  
6 United States Attorney

7 DATED: \_\_\_\_\_

8 By: \_\_\_\_\_  
9 JENNIFER S WANG  
10 NEILL T. TSENG  
11 Assistant United States Attorneys

12 [PROPOSED] ORDER

13 The Stipulation of Dismissal with Prejudice is granted and this entire action is dismissed  
14 with prejudice.

15 IT IS SO ORDERED.

16  
17 DATED: \_\_\_\_\_

18 \_\_\_\_\_  
19 HON. RICHARD SEEBORG  
20 UNITED STATES DISTRICT JUDGE